AJN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.570 OF 1989

State of Maharashtra) ... Appellant
(Orig. Complainant)

Versus

Anna Balu Koli, age 27 years,)
R/o. Vasantnagar, Dudhondi,)
Taluka Tasgaon, Dist. Sangli.) ... Respondent
(Orig. Accused)

Ms. A.S. Pai, A.P.P. for the appellant-State.

Ms. S.D. Khot for the respondent-accused.

CORAM: SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED: 10TH JUNE, 2005.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The respondent (for convenience, "the accused") was tried in the Court of IIIrd Additional Sessions Judge, Sangli, in Sessions Case No.46 of 1988 for the offence punishable under section 302 of the Indian Penal Code (for short, "the IPC"). By the impugned judgment and order dated 18/5/1989, the learned Additional Sessions Judge acquitted the accused. Being aggrieved by the said judgment and order of acquittal, the State of Maharashtra has preferred this appeal.

2. The prosecution story may be shortly stated. Deceased Dadu Bhosale was residing with his wife PW-2

Sonabai, his son PW-8 Dilip and his daughter-in-law in Vasantnagar at Dudhondi. The deceased belonged to Nandiwale community. The accused is also a resident of Vasantnagar. The accused belongs to Kadaklaxmi 'Mariamma' community. The deceased was the panch of his community. According to the prosecution, the accused was insisting the deceased to allow the members of his community to mix with the members of Nandiwale community but the deceased did not agree to it. The accused used to quarrel with the deceased over the said refusal. He used to threaten the deceased. It is suggested that the said refusal is the motive for the instant crime.

3. On 24/11/1987 at about 9.00 a.m., the deceased went to the land of Shivaji Arbune to bring fodder for cattle. It was the practice of PW-2 Sonabai to share the burden of the bundle of grass by meeting him on the way. On that day, PW-2 Sonabai put the water on the oven and was waiting for the deceased. The deceased did not return early and as per practice PW-2 Sonabai went towards the land of Shivaji by the bund. PW-2 Sonabai noticed her husband proceeding towards her by the bund of Shivaji. She saw the accused coming out of sugarcane crop of Shivaji Arbune. The deceased was carrying a bundle of grass. The accused caught hold of the legs of the deceased and pulled him. The deceased fell down. According to PW-2 Sonabai, the accused gave blows by sickle near the right ear of the deceased. PW-2 Sonabai rushed towards the deceased and took his head on her lap

and raised cries. PW-3 Chhaya, the daughter of the deceased, who had come to her parents' house for the marriage of Sharada, the daughter of her maternal uncle heard the cries of her mother and rushed to her mother. She saw the accused hurriedly passing from the land. PW-3 Chhaya went near the deceased. In the meanwhile, PW-4 Vasant, PW-5 Ranga who were chewing pan in front of pan shop of Subrao Deshmukh heard the cries of PW-2 Sonabai and rushed to the spot. They also claim to have seen the accused running away with a sickle. Both of them went near the deceased. According to the prosecution, in the presence of PW-3 Chhaya, PW-4 Vasant, PW-5 Ranga and PW-8 Dilip, PW-2 Sonabai narrated the incident. PW-8 Dilip then went to Kundal Police Station and lodged his complaint, which is at Ex-23. On the basis of the complaint, the investigation was set into motion.

4. The accused was arrested on 26/11/1987 while he was hiding in sugarcane crop of Kulkarni at Kasegaon. A satchel containing sickle, yellow shirt, one pant and under-pant and one chaddar (articles 22 to 27) were seized from him and they were attached under panchnama (Ex-12). Thereafter, the seized articles which included the clothes of the deceased, blood of the accused and the sickle were sent to the chemical analyser. Post-mortem was done on the corpse of the deceased. After completion of the investigation, the accused came to be charged as aforesaid.

5. The accused pleaded not guilty to the charge. He denied his presence on the land at the time of the incident. According to him, the deceased was lying on the land and Malutai, wife of Shivaji Arbune informed PW-2 Sonabai that the deceased was lying dead on the land. He contended that according to him, the panch members of Nandiwale community have conspired and involved him.

6. In support of its case, the prosecution examined as many as 13 witnesses. The prosecution case rests on the evidence of PW-2 Sonabai, the wife of the deceased, who claims to have seen the incident. Her evidence is sought to be corroborated by the evidence of her daughter PW-3 Chhaya and the evidences of PW-4 Vasant and PW-5 Ranga. The details of investigation have been given by PW-11 P.S.I. Shamrao Salokhe. PW-6 Dr. Gurunath Modak has deposed about the post-mortem conducted on the corpse of the deceased. The post-mortem report is at Ex-19.

7. After perusing the evidence on record, the learned Sessions Judge was of the view that the prosecution has not proved its case beyond reasonable doubt and, hence, he acquitted the accused. Being aggrieved by the said judgment and order of acquittal, the State of Maharashtra has approached this court.

8. With the assistance of the learned counsel, we have

gone through the evidence and the record. We have heard Ms. Pai, the learned A.P.P. in support of the appeal. She contended that the trial court erred in disbelieving the evidence of PW-2 Sonabai, which is corroborated by the evidence of PW-3 Chhaya, PW-4 Vasant and PW-5 Ranga. The learned A.P.P. urged that on the shirt of the accused, the blood of "A" group was found. The blood group of the deceased is also "A". This is a very clinching circumstance. The learned A.P.P. submitted that the trial court failed to notice this vital aspect of the prosecution case. She further urged that PW-3 Chhaya, PW-4 Vasant, PW-5 Ranga have seen the accused running away with a sickle soon after the incident. If this fact is taken into consideration with the evidence of PW-2 Sonabai, it must be concluded that the accused is the perpetrator of the crime. The learned A.P.P. urged that the sickle was recovered from the accused and human blood was found on the sickle. This is also a very relevant circumstance indicating the guilt of the accused. She submitted that the trial court erred in acquitting the accused. She submitted that the impugned judgment and order is perverse and, therefore, the same should be set aside and the accused should be convicted.

9. As against this, Ms. Khot, the learned counsel appearing for the accused submitted that no interference is necessary with the impugned judgment and order as the prosecution has failed to establish its case beyond reasonable doubt.

10. Before we deal with the rival contentions, we must note that since we are dealing with an appeal against acquittal, unless we find that the impugned judgment and order is perverse, it would not be possible for us to interfere with it. Even if on the facts before us a different view is possible, if the view taken by the trial court is a reasonably possible view, the same cannot be interfered with.

11. Before we deal with the rival contentions, it is necessary to have a look at the evidence of PW-6 Dr. Gurunath Modak, who has done the post-mortem on the corpse of the deceased. On examination, PW-6 Dr. Modak found the following external injuries on the person of the deceased.

i) An incised wound over right ear top 1 inch x 1/2 inch directign upwards parietal region.

ii) An incised wound just behind right ear 3 inches in length 1 inch in breadth and depth was 1 inch.

iii) An incised wound just behind second injury 1 inch x 1/2 inch, 1 inch away from right ear scalp deep occipiptal region.

He found the following internal injuries.

i) huge sub dural haematome over right occipital region and right parietal region.

ii) Fracture of right parietal bone and irregular piece of 1 inch circumference.

12. According to PW-6 Dr. Modak, the probable cause of death was shock and haemorrhage as a result of injuries stated in column No.17 to 19 and fracture of right parietal bone.

13. The prosecution case entirely rests on the evidence of PW-2 Sonabai. It is, therefore, necessary to see whether PW-2 Sonabai's evidence inspires confidence and whether there is sufficient corroboration to her evidence. PW-2 Sonabai has stated that on the day of the incident, the deceased left the house at 9.00 a.m. to collect sugarcane leaves from the land of Shivaji Arbune. However, he did not return for a long time. As per the practice, she went to bring the bundle of grass from the deceased. She was proceeding from the bund of the land. She saw the deceased coming from opposite direction with the fodder. The accused came out from the sugarcane crop. The accused caught hold of the legs of the deceased and pushed him. The deceased fell down. The accused gave sickle blow on the person of the deceased. He gave blows near the right ear. PW-2 Sonabai raised

shouts. She went near the deceased and took his head on her lap. By the time, PW-4 Vasant, PW-5 Ranga and PW-3 Chhaya, her daughter came there. The accused ran away in the sugarcane crop of Tika. PW-3 Chhaya and PW-4 Vasant chased the accused. Her son PW-8 Dilip came there. She did not disclose that the deceased was beaten by the accused. PW-3 Chhaya returned and, thereafter, she told her that the accused had killed the deceased. It appears from her cross-examination that she omitted to state before the police that PW-3 Chhaya and others had chased the accused. While assessing the evidence of this witness, we must keep in mind that she is the wife of the deceased and, therefore, is an interested witness. Her evidence has, therefore, to be read with care and circumspection. We find that there is no sufficient corroboration to her evidence. She has stated that she did not disclose the fact that the accused beat the deceased till PW-3 Chhaya came. This conduct of her is unnatural. PW-4 Vasant and PW-5 Ranga had already arrived on the scene. PW-8 Dilip, her son had also arrived on the scene. Her natural reaction ought to have been to disclose the incident to them. However, according to her, only when PW-3 Chhaya returned to the scene that she disclosed that the accused had killed the deceased. This conduct of PW-2 Sonabai makes her claim that she had seen the incident suspect. We are drawing this conclusion also because we do not find sufficient corroboration to the evidence of this witness from the other evidence on record.

14. PW-3 Chhaya had come to her parents' house to attend the marriage. According to her, she was outside the house. She heard the cries of PW-2 Sonabai. She ran towards the scene of offence. She claims to have seen the accused running away. However, in the cross-examination, she has stated that she has not stated before the police that she saw the accused running away in the sugarcane crop. It appears that she has also not stated before the police that PW-4 Vasant and PW-5 Ranga had come to the spot. These admitted omissions in her police statement are significant. Her claim that she saw the accused running away will have to be rejected and her evidence makes the presence of PW-4 Vasant and PW-5 Ranga also doubtful.

15. PW-4 Vasant claims that he rushed to the scene of offence after hearing the cries of PW-2 Sonabai. In his cross-examination, he has said that the back of the accused was towards him when he was running. If the back of the accused was towards him, it is not understood as to how he can see the face of the accused. Besides, PW-3 Chhaya has not stated about his presence in the police statement. PW-5 Ranga has also made a similar claim. He had also come to the scene of offence after hearing the cries of PW-2 Sonabai. He has clarified that he noted the accused from a distance of 100 feet. When PW-3 Chhaya has not referred to the presence of this witness at the scene of offence in her police statement, we feel

that the claim of this witness that he had been to the scene of offence cannot be accepted. It is also significant to note that the deceased was his uncle. The evidence of this witness is in the nature of evidence of an interested witness. We find it difficult to rely on this witness.

16. It is also necessary to refer to the evidence of PW-8 Dilip, who is the son of the deceased. According to this witness, on the date of the incident at about 9.15 a.m., he was returning home from the house of Sharada. He heard the shouts of his mother and ran to the scene of offence. PW-3 Chhaya was present near her mother. PW-4 Vasant and PW-5 Ranga were also present. His mother told him that the accused had assaulted the deceased with the sickle. He then went to Kundal Police Station and lodged the complaint. In his cross-examination, he has admitted that in the FIR lodged by him, he has not mentioned that PW-3 Chhaya, PW-4 Vasant and PW-5 Ranga were present near his mother. This omission makes a dent in the prosecution story. The presence of PW-3 Chhaya, PW-4 Vasant and PW-5 Ranga becomes extremely doubtful. If they were indeed present then it was a very vital circumstance and the first informant PW-8 Dilip would not have missed it. The fact that he has not mentioned this fact before the police statement, gives a fatal blow to the prosecution story.

17. That takes us to the chemical analyser's report. We

must express our total dissatisfaction about the manner in which the Investigating Agency had conducted this investigation. We have no manner of doubt that the Investigating Agency was oblivious of the responsibility which lies on its shoulder to see that the perpetrators of the crime do not escape punishment. The incident in question had taken place on 24/11/1987. It appears that the articles were attached under panchnama on 26/11/1987 and they were sent for chemical analysis on 2/3/1988 i.e. after a period of about four months. It is not clear where the articles were kept. If the articles were not properly sealed and they were not preserved properly, contamination cannot be ruled out. The chemical analyser has taken his own sweet time in sending his report. The chemical analyser's report is dated 30/6/1988. There is remissness at every stage. We deprecate this lethargy. In fact, on an earlier occasion, we had expressed our anguish and called the officers of the chemical analyser's office and asked for an explanation. Accordingly, a report has been forwarded and it is on our file. The report states number of measures taken by the Government to improve the situation. We hope and trust that in future similar lacunas are not allowed to mar the investigation.

18. Going back to the merits of the case, it is an admitted position that the chemical analyser's report states that the blood group of the accused could not be determined. It is also an admitted position that the

blood of the deceased was not sent to the chemical analyser. However, it appears that on article 7, which is a shirt worn by the accused, the blood of "A" group was found. Therefore, according to the prosecution, the deceased's blood group was "A". On the clothes worn by the deceased also blood of "A" group was found. This is the piece of evidence on the basis of which the learned A.P.P. wanted to canvass that the prosecution has successfully proved that it is the accused who is responsible for the fatal blows given to the deceased. We are unable to come to this conclusion. The enormous delay in sending the articles for the chemical analysis, absence of any evidence on record to suggest that the articles were properly preserved and further enormous delay at the chemical analyser's end in sending the report makes us apprehensive about its authenticity. According to us it is highly risky to rely on this report. We also cannot understand as to why the clothes of PW-2 Sonabai were not immediately sent to the chemical analyser. It is PW-2 Sonabai's case that she had taken the head of the deceased on her lap. The injury was on the head. Obviously, therefore, there would have been extensive patches of blood on the saree of PW-2 Sonabai. That would have been a valuable piece of evidence in support of the prosecution case particularly when there is a discrepancy as to where the body of the deceased was found. According to PW-2 Sonabai, she was sitting on the bund whereas in the panchnama it is stated that scene of offence is on the mud near the east-west bund of Shivaji.

If the prosecution was to place on record the chemical analyser's report indicating the blood group of the blood found on the clothes of the deceased that would have supported the testimony of PW-2 Sonabai. Sadly, that evidence is not forthcoming.

19. The prosecution has examined PW-8 Gunda the boat owner, perhaps to establish that the accused was carrying his blood stained clothes in the satchel. The trial court has rightly disbelieved PW-8 Gunda on the ground that being a boat owner who admittedly carried 200 to 300 persons in his boat everyday, it was difficult for him to depose in the court that it was the accused who had tried to wash his clothes in his boat. This is particularly so when he was not knowing the accused. The credibility of the prosecution case is shaken by the introduction of this circumstances.

20. Through PW-8 Gunda, it was sought to be established that the accused tried to wash his clothes in the water as he was travelling by PW-8 Gunda's boat and he was prevented from doing so by PW-8 Gunda. Therefore, the accused squeezed the clothes and put them in the satchel. Even if it is assumed that PW-8 Gunda was telling the truth and even accepting that it is possible to detect blood stains on the clothes even after they are washed, in our opinion in the circumstances, it was necessary for the prosecution to send the clothes promptly to the chemical analyser. This has not been done. The

prosecution story that human blood of "A" group was found on the clothes of the accused is difficult to accept.

21. All these facts persuade us to hold that the prosecution has failed to prove its case beyond reasonable doubt. We feel that the view taken by the trial court is the only reasonably possible view, which we would not like to disturb. Hence appeal is rejected.

(SMT. RANJANA DESAI, J.)

(D.B. BHOSALE, J.)